No. 93-1636

In The

Supreme Court of the United States

October Term, 1993

TOM SWINT, TONY SPRADLEY,
DRUCILLA JAMES and JEROME LEWIS,

Petitioners,

v.

CHAMBERS COUNTY COMMISSION,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Eleventh Circuit's construction of Alabama law on the issue of whether a sheriff, a state officer, is a final policymaker for the county with respect to law enforcement is entitled to deference pursuant to *Pembaur v. Cincinnati*, 475 U.S. 469 (1986), *St. Louis v. Praprotnik*, 485 U.S. 112 (1988), and *Jett v. Dallas Indep. School Dist.*, 491 U.S. 701 (1989)?

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Respondent Chambers County Commission respectfully requests that the Petition for a Writ of Certiorari to review the judgment and opinion of the United States Court of Appeals for the Eleventh Circuit be denied.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

There are no federal constitutional provisions directly at issue in the question raised by the Petition for a Writ of Certiorari. The statutory provisions involved are

42 U.S.C. § 1983 and 42 U.S.C. § 1985. The texts of these statutory provisions are reproduced in the Appendix, App. 1-3.

State constitutional provisions which are relevant to the issues before the Court include Alabama Constitution of 1901, Article V, § 112; Article V, § 138; Article VII, § 174; and Amendment. No. 35. State statutory provisions involved include Alabama Code §§ 36-21-10, 36-21-46 and 36-22-16 (1975). The texts of these statutory provisions are reproduced in the Appendix, App. 3-9.

STATEMENT OF THE CASE

Upon review of the Petitioners' "Statement of the Case", Respondent Chambers County Commission does not perceive any misstatements of the facts which would have a bearing on the "question of what issues would properly be before the Court if certiorari were granted."

REASONS NOT TO GRANT THE WRIT

THE ELEVENTH CIRCUIT'S CONSTRUCTION OF ALABAMA LAW ON THE ISSUE OF WHETHER A SHERIFF, A STATE OFFICER, IS A FINAL POLICY-MAKER FOR THE COUNTY WITH RESPECT TO LAW ENFORCEMENT IS ENTITLED TO GREAT DEFERENCE PURSUANT TO *PEMBAUR V. CINCINNATI*, 475 U.S. 469 (1986), *ST. LOUIS V. PRAPROTNIK*, 485 U.S. 112 (1988), AND *JETT V. DALLAS INDEP. SCHOOL DIST.*, 491 U.S. 701 (1989) AND, THEREFORE, THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE DENIED.

A. THE DECISION OF THE ELEVENTH CIRCUIT IS IN ACCORD WITH THIS COURT'S DECISIONS IN *PEMBAUR V. CINCINNATI*, 475 U.S. 469 (1986), *ST. LOUIS V. PRAPROTNIK*, 485 U.S. 112 (1988), AND *JETT V. DALLAS INDEP. SCHOOL DIST.*, 491 U.S. 701 (1989).

Petitioners challenge the Eleventh Circuit's determination that Alabama sheriffs are not final county policymakers with respect to law enforcement because the decision is, in their view, inconsistent with this Court's holding in *Pembaur v. Cincinnati*, 475 U.S. 469 (1986) (plurality opinion). Indeed, *Pembaur* did accept the Sixth Circuit's conclusion that, under Ohio law, sheriffs and prosecutors are county officials authorized to establish official policy for their county with respect to law enforcement. 475 U.S. at 476. However, *Pembaur* cannot fairly be characterized as establishing a universal principle that, under the laws of all states, sheriffs will be considered final policymakers for counties with respect to law enforcement activities. To the contrary, *Pembaur* and its progeny recognize that since no two states are going to

define policymaking authority identically, the various circuit courts of appeal should make independent evaluations of each state's law and these evaluations are due to be afforded "great deference." *See Pembaur,* 475 U.S. at 484 & n. 13; *St. Louis v. Praprotnik,* 485 U.S. 112, 124-25 (1988) (plurality opinion); *Jett v. Dallas Indep. School Dist.,* 491 U.S. 701, 737-78 (1989) (plurality opinion). Because the Eleventh Circuit properly based its decision on an analysis of Alabama law, the holding below is consistent with the legal principles articulated in *Pembaur.*

In *Pembaur,* this Court wisely refused to delve into the minutiae of Ohio state law and re-examine the Sixth Circuit's basis for holding Ohio counties liable for the misconduct of sheriffs and prosecutors. Instead, the Court merely accepted the Sixth Circuit's determination as being the "definitiv[e] constru[ction]" of Ohio law and proceeded to analyze the county's liability under § 1983. 475 U.S. at 491. (O'Connor, J., concurring). Justice Brennan, writing for the majority, consistently referred to the description of Ohio sheriffs as final county policymakers as being the Sixth Circuit's conclusion, not the conclusion of this Court.

> Based upon *its* examination of Ohio law, the *Court of Appeals* found it "clea[r]" that the Sheriff and the Prosecutor were both county officials authorized to establish "the official policy of Hamilton County" with respect to matters of law enforcement.

475 U.S. at 476 (citation omitted) (emphasis added); *see also* 475 U.S. at 484 ("[T]he *Court of Appeals* concluded, based upon *its* examination of Ohio law. . . . ") (emphasis added). Because the Sixth Circuit's determination on the

issue of final policymaking authority necessarily arose out of state law, *Pembaur,* 475 U.S. at 483, this Court, as is its practice in matters involving state law, afforded the determination "great deference." 475 U.S. at 484, n. 13 (*citing United States v. S.A. Empresa de Viacao Aerea Rio Grandense,* 467 U.S. 797, 815, n. 12, 104 S.Ct. 2755, 2766. n. 12, 81 L.Ed.2d 660 (1984), *Brockett v. Spokane Arcades, Inc.* 472 U.S. 491, 499-500, 105 S.Ct. 2794, 2799-2800, 86 L.Ed.2d 394 (1985) (citing cases) and *Bishop v. Wood,* 426 U.S. 341, 345-347, 96 S.Ct. 2074, 2077-2078, 48 L.Ed.2d 684 (1976)).

Since *Pembaur,* this Court has revisited the question of final policymaking liability in two cases which are not cited in the Petition for a Writ of Certiorari. Although neither of the cases involve county sheriffs, both look to state law on the issue of final policymaking authority and, just as significantly, defer to the court of appeal's construction of state law.

In *St. Louis v. Praprotnik,* 485 U.S. 112 (1988) (plurality opinion), the plaintiff, once a management-level city employee, contended that the City demoted him and terminated his employment without due process of law and in retaliation for the exercise of protected free speech. 485 U.S. at 114-17. Instead of looking to state law to see where final policymaking authority for employment was vested as *Pembaur* suggested, the court of appeals ignored the most relevant portions of state law and broadly defined the term "municipal policymaker" to find municipal liability. *Praprotnik,* 485 U.S. at 131. This Court reversed the Eighth Circuit with the warning that "[a] federal court would not be justified in assuming that municipal policymaking authority lies somewhere other

than where the applicable law purports to put it." *Id.* at 126. Furthermore, the Court recognized that since states have "wide latitude" in structuring the powers given to local government, logically, there will be a variety of results in the matter of where final policymaking authority is reposed. *Id.* at 124-25.

Most recently, in *Jett v. Dallas Indep. School Dist.*, 491 U.S. 701 (1989) (plurality opinion), this Court addressed the issue of final policymaking authority in yet another context. In *Jett*, a high school football coach alleged that both the school principal and district superintendent had him demoted and transferred in retaliation for the exercise of protected free speech and because of racial animosity. 491 U.S. at 705-07. Jett sued the school district and the federal district court found that the school district had delegated to the principal and superintendent final policymaking authority in the matter of employment. *Id.* at 708. From a substantial plaintiff's verdict, the school district appealed on the ground that the plaintiff had failed to prove that the individual defendants' conduct represented official school district policy. *Id.* The Fifth Circuit Court of Appeals agreed with the school district and reversed. This Court granted the Petition for a Writ of Certiorari. Although generally affirming the Fifth Circuit's reversal of the district court, this Court remanded the issue of final policymaking authority to the Court of Appeals with instructions for the court to examine Texas law on the issue. *Id.* at 737-38. Again, great deference was shown to the court of appeals' determination as to state law: "We think the Court of Appeals, whose expertise in interpreting Texas law is greater than our own, is in a better position to determine whether [the individual

defendants] possessed final policymaking authority. . . . " *Id.* at 738.

Petitioners, by their insistence that the Eleventh Circuit strayed from the course of this Court's guidance on the issue of final policymaking authority, make the mistake of "overlooking the forest for the trees." While carefully following the guidelines set out by *Pembaur, Praprotnik,* and *Jett,* the Eleventh Circuit analyzed Alabama law and simply came to a different conclusion than did the Sixth Circuit in *Pembaur* after analyzing Ohio law. The Eleventh Circuit acknowledged that its duty under *Pembaur, Praprotnik,* and *Jett* was to examine Alabama law to determine whether the sheriff exercises final policymaking authority for the county in the area of law enforcement. *Swint v. City of Wadley, Ala.*, 5 F.3d 1435, 1450 (11th Cir. 1993), *opinion modified*, 11 F.3d 1030 (11th Cir. 1994).

In conducting its analysis of state law on this issue, the Eleventh Circuit chose to rely primarily on two factors. First, the court looked to the holding of the Alabama Supreme Court in *Parker v. Amerson*, 519 So.2d 442 (Ala. 1987). In *Parker*, the Alabama Supreme Court recounted the turn of the century controversy in Alabama over whether the sheriff should be accountable to county government or to the State of Alabama. Apparently, in the years leading up to Alabama's Constitutional Convention of 1901, Alabama law had placed the county sheriff under the authority of local officials. However, the local authorities had proven unable to effectively prevent the local sheriffs' misconduct. "[C]ounty courts [had failed] to punish sheriffs for neglect of duty and [the] sheriffs'

acquiescence in mob violence and ruthless vigilantism." *Parker*, 519 So.2d at 443. In response to these concerns, Alabama revised the state constitution making the sheriff an executive officer of the *state*. *See* Ala. Const. of 1901, art. V, § 112, App. 3. The practical effect of this change was that, "sheriffs were made more accountable to the supreme executive officer of the state, the Governor. . . . and the [Alabama] Supreme Court [obtained] original jurisdiction to hear impeachment proceedings against sheriffs." *Parker*, 519 So.2d at 444. *See* Ala. Const. of 1901, art. V, § 138, App. 3; Ala. Const. of 1901, art. VII, § 174, App. 3, 4; Ala. Const. of 1901, amend. No. 35, App. 4. Based upon the plain language of the Alabama Constitution and the history behind it, the Alabama Supreme Court concluded, in response to the certified question before it, that "[a] sheriff is not an employee of a county for purposes of imposing liability on the county under a theory of respondeat superior." *Parker*, 519 So.2d at 442.

The Eleventh Circuit also looked at the unique limitations placed upon county authority by Alabama law. Alabama counties are "authorized to do only those things permitted or directed by the legislature of Alabama." *Lockridge v. Etowah County Comm'n*, 460 F.2d 1361, 1363 (Ala.Civ.App. 1984). Consequently, Alabama counties have no inherent "police powers", are unable to enact or enforce criminal codes, and must rely exclusively upon the state and its agents for law enforcement. Therefore, the Eleventh Circuit was justified in concluding that "Sheriff Morgan is not the final repository of Chambers County's general law enforcement authority, because [the county] has [no law enforcement authority]". *Swint*, 5 F.3d at 1451.

Other aspects of Alabama law not mentioned in the opinion below illustrate the correctness of the Eleventh Circuit's conclusion. Alabama sheriffs and their deputies, as state officers, are immune from suit in both state and federal court. *See Carr v. City of Florence*, 916 F.2d 1521 (11th Cir. 1990); *Parker v. Williams*, 862 F.2d 1471 (11th Cir. 1989); *Parker v. Amerson*, 519 So.2d 442. Alabama county commissions have no authority over the sheriff's personnel decisions as they relate specifically to his deputies. *See Terry v. Cook*, 866 F.2d 373, 379 (11th Cir. 1989). Under Alabama law, the minimum training requirements of sheriff's department employees are established by the state rather than the county and the training is supervised by a state agency. *See* Ala. Code § 36-21-46 (1975).[1] Finally, although compensation for sheriffs and their deputies is obtained from the county treasury, state law establishes their rate of compensation. Ala. Code §§ 36-22-16, 36-21-10 (1975).

Upon their own independent analyses of Alabama law, three Alabama federal district judges have also concluded that Alabama sheriffs are not final policymakers for the county with respect to law enforcement. *See Forehand v. Roberts*, No. CV-92-A-601-N, slip op. at 2-3 (M.D. Ala. August 11, 1992) (Albritton, J.); *Smith v. Arndt*, No. CV-92-H-1227-NE, slip op. at 2-3 (N.D. Ala. July 14, 1992) (Hancock, J.); *Sanders v. Miller*, No. CV-91-N-2804-NE, slip

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[1] *Compare Davis v. Mason County*, 927 F.2d 1473, 1481 (9th Cir. 1991), *cert. denied*, 112 S.Ct. 275 (1991). As one ground for holding the county liable for acts of sheriff's deputies, the Ninth Circuit found that the state merit law did *not* cover the training of sheriff's deputies.

op. at 4-7 (N.D. Ala. April 13, 1992) (Nelson, J.). Based upon the same reasoning in *Pembaur* and *Jett* that the courts of appeal have considerable acumen in construing state law and should therefore be given deference concerning state law questions, the district courts should likewise be afforded substantial deference. *Cf. Bishop v. Wood*, 426 U.S. at 345. (United States Supreme Court would defer to district court's determination of whether police officer was an "at will" employee under state law).

Because the reasoning of the Eleventh Circuit in the opinion below is in complete accord with this Court's holdings in *Pembaur, Praprotnik*, and *Jett*, the Petition for a Writ of Certiorari is due to be denied.

B. ALTHOUGH THE LAWS OF INDIVIDUAL STATES VARY IN THE WAY LAW ENFORCEMENT AUTHORITY IS ALLOCATED BETWEEN STATE AND COUNTY GOVERNMENTS, THERE IS NO CONFLICT AMONG THE CIRCUITS AS TO THE PREEMINENCE OF STATE LAW IN THE DETERMINATION OF WHERE FINAL COUNTY POLICYMAKING AUTHORITY IS REPOSED.

Petitioners attempt to manufacture a conflict among the circuit courts of appeal by emphasizing the fact that some circuits have found sheriffs to be final policymakers for the county while other circuits have come to the opposite conclusion. Certainly, several circuits, after analyzing state law, have denominated sheriffs to be final policymakers for the county with respect to law enforcement. *See, e.g., Pembaur v. City of Cincinnati*, 746 F.2d 337, 341 (6th Cir. 1984) (Upon detailed review of Ohio statutes, the court found Ohio sheriffs to be county officers

and the final repository of county law enforcement authority); *Turner v. Upton County, Texas*, 915 F.2d 133, 136 (5th Cir. 1990), *cert. denied*, 498 U.S. 1069 (1991) (Considering "unique structure of county government in Texas," the court found the county liable for the sheriff's acts and acknowledged that "[it] has long been recognized that, in Texas, the county sheriff is the county's final policymaker in the area of law enforcement. . . . "); *Davis v. Mason County*, 927 F.2d 1473, 1480 (9th Cir. 1991), *cert. denied*, 112 S.Ct. 275 (1991) (Applying Washington state law, the court found the sheriff to possess final county authority for the training of his deputies); *Gobel v. Maricopa County*, 867 F.2d 1201 (9th Cir. 1989) (The court remanded intimating that under Arizona law county could be "automatically" liable for the acts of the sheriff). Even the Eleventh Circuit found that, under Florida law, sheriffs are final policymakers with respect to county law enforcement. *See Lucas v. O'Loughlin*, 831 F.2d 232, 234-35 (11th Cir. 1987), *cert. denied*, 485 U.S. 1035 (1988).

At least two other circuit courts, after analyzing the laws of a particular state within their circuit, have refused to find that sheriffs are the final policymaking authority for the county. *See Soderbeck v. Burnett County, Wis.*, 821 F.2d 446, 451 (7th Cir. 1987) (County not liable for acts of sheriff because Wisconsin Supreme Court had conclusively ruled that Wisconsin sheriffs are state officers accountable only to the state); *Meade v. Grubbs*, 841 F.2d 1512, 1528 (10th Cir. 1988) (Oklahoma counties were not liable for the acts of sheriff's deputies because the counties "ha[ve] no statutory duty to hire, train, supervise or discipline the county sheriffs or their deputies."); *see also Thompson v. Duke*, 882 F.2d 1180, 1187 (7th Cir. 1989), *cert.*

denied, 495 U.S. 929 (1990) (holding that Cook County Illinois is not responsible for jail personnel policies because the sheriff is the sole authority with respect to jail employees, and "[t]he sheriff is an independently-elected constitutional officer who answers only to the electorate, not to the Cook County Board of Commissioners"); *Baez v. Hennessy*, 853 F.2d 73, 77 (2nd Cir. 1988), *cert. denied*, 488 U.S. 1014 (1989) (holding that New York counties were not liable for county district attorneys prosecuting criminal matters because the district attorneys, when pursuing prosecutions, represented the state and not the county); *Wing v. Britton*, 748 F.2d 494, 498 (8th Cir. 1984) (Arkansas cities could not be liable for the acts of deputies because under Arkansas law, police chiefs were exclusively responsible for deputies); *Owens v. Fulton County*, 877 F.2d 947, 950-51 (11th Cir. 1989) (Under Georgia law, district attorneys, when prosecuting state laws, are not final policymakers for the county despite the fact that they are elected solely by county voters).

There is no conflict among the circuits over the preeminance of state law in the determination of when an official is to be considered a final policymaker. Because the different circuit courts of appeals are construing the laws of different states, a variance of results should be expected. *See Praprotnik*, 485 U.S. at 124-25. Apparently, the Petitioners would have the circuit courts of appeals abide by a "one size fits all" jurisprudence of final policymaking authority. Not only is such a request illogical, it is directly contrary to the dictates of *Pembaur*, *Praprotnik*, and *Jett*. Regardless of how Ohio, Texas, Florida, or any other state allocates law enforcement authority between state and local government officials, Alabama law, as

discussed *supra*, makes it clear that the sheriff, when enforcing the state's criminal code, is a repository of state, not county, law enforcement authority. Under Alabama law, there is no such thing as county law enforcement authority. Accordingly, the Petition for a Writ of Certiorari should be denied because there is no conflict among the circuits.

C. THIS CASE DOES NOT RAISE AN ISSUE OF FEDERAL LAW.

Petitioners contend that the question presented in their Petition for a Writ of Certiorari involves an important federal question. However, this Court noted in *Praprotnik* that "the identification of policymaking officials is not a question of federal law," but rather, it is a question of state law. 485 U.S. at 124.

CONCLUSION

Based upon the foregoing, Respondent Chambers County Commission respectfully requests that the Petition for a Writ of Certiorari be denied.

Respectfully submitted,

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42 U.S.C. § 1983.

Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State or Territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

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42 U.S.C. § 1985.

(1) If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

(2) If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any

lawfully qualified person as an elector for President or States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

Ala. Const. of 1901, art. V, § 112.

The executive department shall consist of a governor, lieutenant governor, attorney-general, state auditor, secretary of state, state treasurer, superintendent of education, commissioner of agriculture and industries, and a sheriff for each county.

Ala. Const. of 1901, art. V, § 138.

A sheriff shall be elected in each county by the qualified electors thereof, who shall hold office for a term of four years, unless sooner removed, and he shall be ineligible to such office as his own successor; provided, that the

terms of all sheriffs expiring in the year nineteen hundred and four are hereby extended until the time of the expiration of the terms of the other executive officers of this state in the year nineteen hundred and seven, unless sooner removed. Whenever any prisoner is taken from jail, or from the custody of any sheriff or his deputy, and put to death, or suffers grievous bodily harm, owing to the neglect, connivance, cowardice, or other grave fault of the sheriff, such sheriff may be impeached under section 174 of this Constitution. If the sheriff be impeached, and thereupon convicted, he shall not be eligible to hold any office in this state during the time for which he had been elected or appointed to serve as sheriff.

Ala. Const. of 1901, art. VII, § 174.

The chancellors, judges of the circuit courts, judges of the probate courts, and judges of other courts from which an appeal may be taken directly to the supreme court, and solicitors and sheriffs, may be removed from office for any of the causes specified in the preceding section or elsewhere in this Constitution, by the supreme court, under such regulations as may be prescribed by law. The legislature may provide for the impeachment or removal of other officers than those named in this article.

Ala. Const. of 1901, amend. No. 35 (amending art. V, § 138).

A sheriff shall be elected in each county by the qualified electors thereof who shall hold office for a term of four years unless sooner removed, and he shall be eligible to such office as his own successor. Whenever any prisoner is taken from jail, or from the custody of any sheriff or his deputy, and put to death, or suffers grevious [grievous] bodily harm, owing to the neglect, connivance, cowardice, or other grave fault of the sheriff, such sheriff may be impeached, under section 174 of this Constitution. If the sheriff be impeached, and thereupon convicted, he shall not be eligible to hold any office in this state during the time for which he had been elected or appointed to serve as sheriff.

Ala. Code § 36-21-10 (1975).

(a) All law enforcement officers employed by any county of this state who is employed as a full-time law enforcement officer shall make at least $1,300.00 per month starting salary.

(b) The provisions of this section may be enforced in any court of competent jurisdiction in this state by an action brought by any citizen seeking a writ of mandamus, mandatory injunction or other proper remedy, and the court trying to cause may order the suspension or forfeiture of the salary, expenses or other compensation of the members of the governing body failing or refusing to comply with the provisions of this section.

(c) Members of the governing body or sheriff of any county are hereby expressly prohibited form requiring law enforcement officers affected by this section to work any more hours than they were normally working in order to circumvent the provisions of this section.

(d) If for any reason any part of this section or its application to any person, body, or situation is held invalid, the remainder of this section and its application to any other person, body, or situation shall not be affected.

(e) The term "law enforcement officer" means any person whose duties involve police work and who are designated law enforcement officers by the Alabama Peace Officers Minimum Standards Act. (Acts 1984, No. 84-409, p. 958.)

Ala. Code § 36-21-46 (1975).

(a) The minimum standards provided in this subsection shall apply to applicants and appointees as law enforcement officers who are not law enforcement officers in the state on September 30, 1971, and to applicants and appointees who, though law enforcement officers on September 30, 1971, cease to be law enforcement offices before making application for employment as a law enforcement officer or being employed as a law enforcement officer. No city, town, county, sheriff, constable or other employer shall employ any such applicant who is not on September 30, 1971, a law enforcement officer and

who continues until the date of his application as a law enforcement officer unless such person shall have first submitted to the appointing authority an application for such employment verified by affidavit of the applicant and showing compliance with the following qualifications:

(1) AGE. – The applicant shall be not less than 19 nor more than 45 years of age at the time of appointment; provided, that for the purpose of calculating his age under this article, the time spent by any applicant on active duty in the armed forces of the United States of America, not exceeding four years, shall be subtracted from the actual age of such applicant who has attained the age of 40 years.

(2) EDUCATION. – The applicant shall be a graduate of a high school accredited with or approved by the state department of education or shall be the holder of a certificate of high school equivalency issued by general educational development.

(3) POLICE TRAINING. – Prior to appointment, the applicant shall have completed at least 240 hours of formal police training in a recognized police training school, which shall include the Federal Bureau of Investigation Police Training Academy or another training school approved by the commission; provided, that an applicant may be provisionally appointed without having completed the police training prescribed in this subdivision, subject to the condition that he shall complete such training within nine months after provisional appointment; and, should he fail to complete such training, his appointment shall be null and void.

(4) PHYSICAL QUALIFICATIONS. – The applicant shall be not less than five feet two inches nor more than six feet 10 inches in height, shall weigh not less than 120 pounds nor more than 300 pounds and shall be certified by a licensed physician designated as satisfactory by the appointing authority as in good health and physically fit for the performance of his duties as a law enforcement officer. The commission may for good cause shown permit variances from the physical qualifications prescribed in this subdivision.

(5) CHARACTER. – The applicant shall be a person of good moral character and reputation. His application shall show that he has never been convicted of a felony or a misdemeanor involving either force, violence or moral turpitude and shall be accompanied by letters from three qualified voters of the area in which the applicant proposes to serve as a law enforcement officer attesting his good reputation.

(b) The foregoing requirements shall not apply to any person who is presently employed as a law enforcement officer in the state and who continues to be so employed when he makes application for or is employed as a law enforcement officer in a different capacity or for a different employer. (Acts 1971, No. 1981, p. 3224, § 7; Acts 1971, 3rd Ex. Sess., No. 156, p. 4399, § 1.)

Ala. Code § 36-22-16 (1975).

(a) Sheriffs of the several counties in this state shall be compensated for their services by an annual salary payable in equal installments out of the county treasury as the salaries of other county employees are paid. The annual salary of the sheriff shall be $35,000.00, commencing with the next term of office, unless a higher salary is specifically provided for by law by general or local act hereafter enacted.

(b) Such salary shall be in lieu of all fees, compensation, allowance, percentages, charges and costs, except as otherwise provided by law. The sheriff and his deputies shall, however, be entitled to collect and retain such mileage and expense allowance as may be payable according to law for returning or transferring prisoners and insane persons to or from points outside the county. (Acts 1969, No. 1170, p. 2179 § 1; Acts 1971, No. 77, p. 339; Acts 1973, No. 193, p. 229; Acts 1978, No. 538, p. 596; Acts 1981, No. 81-667, p. 1091; Acts 1985, No. 85-518, p. 612.)
